

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: August 26, 2009
HEARING TIME: 10:00 a.m.
HEARING PLACE: New York

IN RE

LEHMAN BROTHERS HOLDINGS, INC., et
al.,

DEBTORS

CHAPTER 11
CASE NO. 08-13555
JUDGE: James Peck
(Jointly Administered)

IN RE

BNC MORTGAGE LLC,

DEBTORS

CHAPTER 11
CASE 09-10137
JUDGE: James Peck

**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362 (d)**

PLEASE TAKE NOTICE that Wells Fargo Bank, N.A. as Trustee, by and through its attorneys, Shapiro & DiCaro, LLP, will move this Court at the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green Courtroom 601, New York, NY 10004, on August 26, 2009 at 10:00a.m., or as soon thereafter as counsel may be heard, for an Order pursuant to Bankruptcy Rule 4001 and 11 U.S.C. §362(d) terminating the automatic stay as to Movant's interest in real property known as 87-16 95th Avenue, Ozone Park, New York 11416, and for such and further relief as is just and proper.

PLEASE TAKE FURTHER NOTICE that the relief requested may be granted without hearing if no objection is timely filed and served with the Court by the deadline set forth above.

Dated: August 3, 2009
Rochester, New York



Anne E. Miller-Hulbert
Anne E. Miller-Hulbert
Shapiro & DiCaro, LLP
Attorneys for Wells Fargo Bank, N.A. as Trustee
250 Mile Crossing Boulevard
Suite One
Rochester, NY 14624
(585) 247-9000

TO: Parties in Interest on the Annexed List

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**MOTION FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362(d)**

Wells Fargo Bank, N.A., as Trustee, by and through its attorneys, Shapiro & DiCaro, LLP, for an Order vacating the automatic stay pursuant to 11 U.S.C. §362(d) and in support thereof, states as follows:

1. BNC Mortgage LLC filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code on or about January 9, 2009. An Order Directing Joint Administration of the Chapter 11 case of BNC Mortgage LLC with Lehman Brothers Holdings, Inc. et al. was issued on January 14, 2009.

2. Wells Fargo Bank, N.A., as Trustee is the holder of a first mortgage executed by Jose Olivo on October 25, 2005 and given to Mortgage Electronic Registration Systems, Inc., as nominee for BNC Mortgage, Inc. securing the repayment of the principal sum of \$381,600.00 due under the Bond/Note and granting Mortgage Electronic Registration Systems, Inc., as nominee for BNC Mortgage, Inc. a security interest in the Property commonly known as 87-16

95th Avenue, Ozone Park, NY 11416 (the "Property"). Copies of the recorded Mortgage and Bond/Note are annexed hereto as Exhibit "A". The mortgage was assigned to Wells Fargo Bank, N.A. as Trustee by instrument dated February 5, 2008 and recorded May 15, 2008 in CRFN 2008000196718. A copy of the recorded assignment of mortgage is annexed as Exhibit "B".

3. The mortgage is in default under the Note and Mortgage for the installment due on August 1, 2007 and all subsequent monthly installments.

4. Movant commenced an action to foreclose its mortgage by the filing of a Summons and Complaint in the Queens County Clerk's Office on February 25, 2008.

5. A foreclosure title search indicated that there is a subordinate mortgage on the Property held by Mortgage Electronic Registration Systems, Inc. as nominee for BNC Mortgage, Inc. ("MERS") in the original principal amount of \$95,400.00. A copy of the foreclosure title search is annexed hereto as Exhibit "C".

6. The payoff balance on the mortgage held by Movant is approximately \$465,770.19.

7. According to the Appraisal which is annexed hereto as Exhibit "D" the fair market value of the Property is \$359,000.00 - \$409,000.00.

8. Upon information and belief, Movant's claim against the Property exceeds the value of the Property and, therefore, Debtor has no equity in the Property.

9. Upon information and belief, Debtor's subordinate mortgage adds little or no value to the bankruptcy estate and, therefore, the Property is not necessary for the reorganization of the Debtor.

10. It is respectfully submitted that good cause exists to vacate the automatic stay of 11 U.S.C. §362 to allow Wells Fargo Bank, N.A. as Trustee to maintain a foreclosure action on its mortgage.

WHEREFORE, Wells Fargo Bank, N.A. as Trustee respectfully requests that an Order be granted vacating the automatic stay as to Wells Fargo Bank, N.A., as Trustee so as to permit the commencement, resumption or maintenance of mortgage foreclosure proceedings with respect to the Property, and for such other and further relief as the Court may deem just and proper.

Dated: August 3, 2009



Anne E. Miller-Hulbert
Anne E. Miller-Hulbert
Shapiro & DiCaro, LLP
Attorneys for Wells Fargo Bank, NA as Trustee
250 Mile Crossing Boulevard
Suite One
Rochester, NY 14624
(585) 247-9000

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**ORDER GRANTING RELIEF FROM
THE AUTOMATIC STAY**

Upon the Motion of Wells Fargo Bank, N.A., as Trustee dated August 3, 2009 with exhibits attached thereto, with proof of service upon the Trustee, Debtor and Debtor's Attorney and the United States Trustee, and the Motion having come to be heard on August 26, 2009, it is hereby:

ORDERED that the automatic stay in effect pursuant to 11 U.S.C. Section 362(a) is hereby vacated for cause pursuant to 11 U.S.C. Section 362(d) as to Wells Fargo Bank, N.A., as Trustee, its agents, assigns or successors in interest so that US Bank, National Association, as Trustee, its agents, assigns or successors in interest may take any and all actions under applicable state law to foreclose its mortgage on the premises known as 87-16 95th Avenue, Ozone Park, NY 11416, and it is further

ORDERED that the Movant shall immediately provide an accounting to the Trustee of any surplus monies realized as a result of the foreclosure sale.

Dated: _____, 2009
New York, NY

Enter:

Honorable James Peck
United States Bankruptcy Judge

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
)ss:
COUNTY OF MONROE)

I, Shannon Thompson, being sworn, says, I am not a party to this action; I am over 18 years of age, I reside in Rochester, New York.

On August 3, 2009 I served the within Notice of Motion and Motion for Relief from Automatic Stay upon the parties in interest set forth below:

TO BNC Mortgage LLC
 Debtor- in- Possession
 1901 Main Street
 Irvine, CA 92624

Weil, Gotshal & Manges, LLP
Attn: Diane Harvey, Esq., Harvey R. Miller, Esq.
Jacqueline Marcus, Esq., Ralph I. Miller, Esq.
Shai Y. Waisman, Esq.
Attorney for Debtors
767 Fifth Avenue
New York, NY 10153

Benjamin Rosenblum, Esq.
Jones Day
Attorneys for Debtors
222 East 41st St.
New York, NY 10017

Curtis, Mallet-Prevost Colt &
Mosle
Attn: Jerrold Lyle Bregman, Esq., Lynn P.
Harrison III, Esq., and Steven J. Reisman, Esq.
Attorneys for Debtors
101 Park Avenue
New York, NY 10178

Hughes Hubbard & Reed
Attn: Christopher K. Kiplok, Esq. Jeffrey S. Margolin, Esq. and
Sarah K. Loomis Cave, Esq.
Attorneys for James W. Giddens, as
Trustee for the SIPA Liquidation of
Lehman Brothers, Inc.
1 Battery Park Plaza
New York, NY 10004

Office of the U.S. Trustee
Attn: Andy Velez-Rivera, Paul
33 Whitehall Street 21st Floor
New York, NY 10004

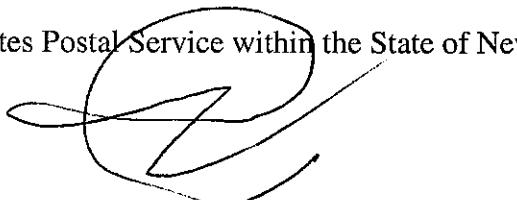
Berstein Shur Sawyer & Nelson
D. Sam Anderson, Esq.
Attorneys for Citibank, N.A. In Its Capacity as Trustee
100 Middle Street
PO Box 9729
Portland, ME 04101

Claims and Noticing Agent
Epiq Bankruptcy Solutions, LLC Claims
Agent f/k/a Bankruptcy Services, LLC
757 Third Avenue 3rd Floor
New York, NY 10017

Milbank, Tweed, Hadley & McCloy, LLP
Attn: Dennis F. Dunne, Esq.
Attorneys for Official Committee for Unsecured Creditors
1 Chase Manhattan Plaza
New York, NY 10005

Quinn Emanuel Urquhart Oliver & Hedges
Attn: Robert K. Dakis
Attorney for Official Committee of
Unsecured Creditors
51 Madison Avenue 22nd Floor
New York, NY 10010

the addresses designated by the foregoing individuals for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.



Shannon Thompson
Legal Assistant

Sworn to before me this
3rd day of August 2009,



Notary Public
Anne E. Hulbert
Qualified in Monroe County
Commissions Expires May 31, 2010